

**IN THE COURT OF APPEALS**  
**FIRST APPELLATE DISTRICT OF OHIO**  
**HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-100120
	:	TRIAL NO. B-0409974
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
RICHARD ELLISON,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Defendant-appellant Richard Ellison appeals the Hamilton County Common Pleas Court’s judgments overruling his “Motion to Reverse Sentence and Withdraw Guilty Plea Based on Void Sentence” and his “Motion to Unseal Records Sealed by the Court.” We affirm the court’s judgments.

In 2005, Ellison was convicted upon guilty pleas to aggravated burglary, kidnapping, and abduction. He unsuccessfully challenged his convictions in appeals to this court and to the Ohio Supreme Court.<sup>2</sup> But he subsequently succeeded in securing a new sentencing hearing because the trial court had failed, at the original sentencing hearing, to advise him concerning postrelease control.

---

<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

<sup>2</sup> See *State v. Ellison*, 1st Dist. No. C-050553, 2006-Ohio-2620, appeal not accepted for review, 109 Ohio St.3d 1507, 2006-Ohio-2998, 849 N.E.2d 1028.

In March 2009, the trial court resentenced Ellison and overruled his motion to withdraw his guilty pleas. He unsuccessfully appealed these judgments.<sup>3</sup>

In January 2010, Ellison filed with the common pleas court documents captioned “Motion to Reverse Sentence and Withdraw Guilty Plea Based on Void Sentence” and “Motion to Unseal Records Sealed by the Court.” The court overruled the motions, and this appeal followed.

Ellison presents on appeal two assignments of error. He asserts that the common pleas court erred in deciding his motions before allowing the state’s response (and, presumably, his reply to the state’s response) to the motions, as required by Loc.R. 14(B) of the Court of Appeals, First Appellate District of Ohio. And he assails the overruling of the motions. We overrule the assignments of error because the court had no jurisdiction to entertain Ellison’s motions.

Ellison’s direct appeal from his March 2009 judgment of conviction had divested the common pleas court of jurisdiction over his case, except to act in aid of the appeal or in a manner not inconsistent with our jurisdiction.<sup>4</sup> Because we did not remand the case, the court did not regain jurisdiction after we had decided the appeal.<sup>5</sup> And while a trial court retains jurisdiction to correct a void judgment,<sup>6</sup> the errors alleged in Ellison’s motion, even if demonstrated, would not have rendered his convictions void.

R.C. 2953.21 et seq., which govern the proceedings upon a petition for postconviction relief, provide “the exclusive remedy by which a person may bring a

---

<sup>3</sup> See *State v. Ellison* (Mar. 31, 2010), 1st Dist. No. C-090207, appeal not accepted for review, 125 Ohio St.3d 1516, 2010-Ohio-3331, 930 N.E.2d 333.

<sup>4</sup> *In re Kurtzhalz* (1943), 141 Ohio St. 432, 48 N.E.2d 657, paragraph two of the syllabus; accord *In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, 829 N.E.2d 1207; *State ex rel. Special Prosecutors v. Judges* (1978), 55 Ohio St.2d 94, 97, 378 N.E.2d 162.

<sup>5</sup> See *State ex rel. Special Prosecutors*, 55 Ohio St.2d at 97.

<sup>6</sup> See *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶18-19.

collateral challenge to the validity of a conviction or sentence in a criminal case.”<sup>7</sup> Therefore, the common pleas court, faced with Ellison’s collateral attacks upon his convictions, should have recast his motions as postconviction petitions and reviewed them under the standards provided by R.C. 2953.21 et seq.<sup>8</sup> But Ellison filed his motions well after the time afforded under R.C. 2953.21(A)(2). And he did not, as he could not, demonstrate that “but for [the errors alleged in his motions], no reasonable factfinder would have found [him] guilty of the offense[s] of which [he had been] convicted.”<sup>9</sup> Because Ellison failed to satisfy the time restrictions of R.C. 2953.21 and the jurisdictional requirements of R.C. 2953.23, the common pleas court properly declined to entertain his postconviction motions.<sup>10</sup>

We, therefore, affirm the court’s judgments.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**CUNNINGHAM, P.J., SUNDERMANN and HENDON, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on September 22, 2010

per order of the Court \_\_\_\_\_.  
Presiding Judge

---

<sup>7</sup> R.C. 2953.21(J).

<sup>8</sup> See *State v. Bush*, 96 Ohio St.3d 235, 2002-Ohio-3993, 773 N.E.2d 522, ¶10.

<sup>9</sup> See R.C. 2953.23(A)(1)(b).

<sup>10</sup> See R.C. 2953.23(A).